



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/170578

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly removed Petitioner from her family FoodShare case for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the reduction in her household's FoodShare benefits effective January 1, 2016. Those benefits were reduced for Petitioner's failure to participate in the FoodShare

Employment and Training (FSET) program as an Able-bodied Adult Without Dependents (ABAWD) who was required to meet a work requirement.

3. Petitioner's FoodShare case was subject to a review in July 2105. Petitioner completed the review and the agency processed it in early August 2015. The agency concluded that Petitioner was not exempt from ABAWD requirements and was referred to the FSET program as an Able Bodied Adult Without Dependents on or about August 5, 2015. Petitioner's spouse was not referred to FSET as he was working full time at the time of the review.
4. Petitioner missed FSET appointments scheduled for August 17, 2015, August 26, 2015, September 2, 2015 and September 14, 2015. Voice mail messages were also left for Petitioner regarding FSET requirements and appointments on the phone number of record - her husband's phone number. The message dates were August 6, 2015, August 27, 2015 and September 2, 2015.
5. Petitioner's time limited FoodShare benefits have been received for the months of October, November and December 2015.

DISCUSSION

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This was implemented statewide as of April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1*. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.
- ...

FSH §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
 - a) Receiving temporary or permanent disability benefits from the government or a private source;
 - b) Mentally or physically unable to work, as determined by the IM agency;
 - c) Verified as unable to work by a statement from a health care professional or social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;

5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
 6. Is a full-time high school student age 18 or over;
 7. Is receiving Transitional FS benefits; or
 8. Is meeting the ABAWD work requirement.
- FSH §3.17.1.5.*

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* A person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FSH, §3.17.1.17.*

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
 2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
 3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
 4. Participating and complying with the requirements of a workfare program.
- FSH, §3.17.1.7 (asterisk comment omitted).*

Petitioner's husband represented her at the hearing. He testified that he did get the phone messages. He was aware of the FSET appointments. He indicated his wife is in English classes at MATC and that transportation is a problem as Petitioner's wife does not drive.

I am declining to reverse this ABAWD sanction. She does not meet the exemption requirements. She missed numerous appointments. A lack of transportation can be a temporary good cause exception to for non-participation, e.g., missing an appointment but it is not exemption from participation. *See FSET Handbook, §6.6.1 and FSH, §3.17.1.5.* Quite frankly, it does not seem that Petitioner's husband was recognizing the urgency of the ABAWD requirements and taking the requirements seriously so as to assure that his wife could participate in FSET requirements. She has not met ABAWD requirements and has used her 3 months of time limited benefits. There is no basis for reversing the agency action or adjusting the time limited benefit clock.

CONCLUSIONS OF LAW

1. That Petitioner is not exempt from ABAWD FoodShare work requirements.
2. That the agency correctly reduced Petitioner's FoodShare household FoodShare benefits by removing Petitioner from the FoodShare household for failing to meet ABAWD requirements.

NOW, THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of March, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability